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MAR 16 2009

In re Application of	:	OFFICE OF PETITIONS
Arturo Maria	:	
Application No.: 09/580689	:	DECISION ON
Filing or 371(c) Date: 05/30/2000	:	PETITION
Attorney Docket Number: 83531-231	:	

This is a decision in response to the "Petition for Revival of an Application for Patent Abandoned Unavoidably Under 37 CFR 1.137(a)," filed January 27, 2009.

This Petition is hereby **dismissed**.

Any further petition must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under [insert the applicable code section]." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

Background

This application became abandoned for failure to timely pay the issue and publication fees on or before December 22, 2008, as required by the Notice of Allowance and Fee(s) Due, mailed September 22, 2008. Accordingly, the date of abandonment of this application is December 23, 2008.

The present petition

Applicant files the present petition and asserts that the Notice of Allowance was not received. Applicant alludes to the filing of a Revocation/Substitute Power of Attorney and Change of Correspondence Address in 2007, and Applicant's subsequent receipt of a Notice of Acceptance of Power of Attorney, mailed to the correct correspondence address on July 2, 2007.

A Grantable Petition Under 37 CFR 1.137(a)

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by: (1) the required reply (unless previously filed), which may met by the filing of a notice of appeal and the requisite fee; a continuing application; an amendment or request for reconsideration which *prima facie* places the application in condition for allowance, or a first or

second submission under 37 CFR 1.129(a) if the application has been pending for at least two years as of June 8, 1995, taking into account any reference made in such application to any earlier filed application under 35 USC 120, 121 and 365(c); (2) the petition fee as set forth in 37 CFR 1.17(l); (3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c). Applicant lacks item (3).

As to item (3), a showing of non-receipt of an Office communication may form the basis for revival of an application based upon unavoidable delay.

Applicable Law, Rules and MPEP

The MPEP 711.03(c)A, provides in relevant part:

The showing required to establish nonreceipt of an Office communication must include

(1) a statement from the practitioner stating that the Office communication was not received by the practitioner at the correspondence address of record. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

(2) a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received.

(3) a copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

MPEP 711.03(c)

Analysis and conclusion

Regrettably, the petition is not grantable at this time. Applicant has failed to demonstrate that the office action was not received. In addition to the statement from practitioner attesting to non-receipt of the Notice, Applicant must provide a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received, and a copy of the file jacket and docket records where the nonreceived Notice would have been entered had it been received and docketed. As stated above, a copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

The petition is dismissed without prejudice. Applicant should file a Request for Reconsideration of Petition and include the necessary statements and/or copies of docket records and file jacket.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Director for Patents
 PO Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300
 Attn: Office of Petitions

By hand: Customer Service Window
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Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

/Derek L. Woods/
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